

The Administrator will consider settlement only to the extent:

- (a) Necessary to prevent the insolvency or bankruptcy of the person seeking settlement, or
- (b) That the violation of the average fuel economy standard resulted, as shown by the person seeking settlement, from an act of God, a strike, or fire, or
- (c) That modification of a civil penalty assessed under this part is necessary to prevent lessening of competition, as determined and as certified by the Federal Trade Commission under section 508(b)(4) of the Motor Vehicle Information and Cost Savings Act, Pub. L. 94-163, 89 Stat. 911 (15 U.S.C. 2008(b)(4)).

§ 511.64 Petitions for settlement; timing, contents.

- (a) A petition seeking settlement under this subpart must be filed within 30 days after the issuance of a final order assessing a civil penalty for a violation of an average fuel economy standard.
- (b)(1) A petition for settlement should be sufficient to allow the Administrator to determine that at least one of the criteria set out in § 511.63 is satisfied, and that the public interest would be served by settlement.
- (2) A petition asserting that settlement is necessary to prevent bankruptcy or insolvency must include:
 - (i) Copies of all pertinent financial records, auditor's reports, and documents that show that the imposition of a civil penalty would cause insolvency, or would cause a company to do an act of bankruptcy, and
 - (ii) A payment schedule that would allow the petitioner to pay a civil penalty without resulting in insolvency or an act of bankruptcy.
- (3) A petition asserting that the violation of the average fuel economy standard was caused by an act of God, fire, or strike must describe corrective and ameliorative steps taken to mitigate the effects of the act of God, fire, or strike.
- (4) A petition based on a certification by the Federal Trade Commission that modification of the civil penalty assessed is necessary to prevent a sub-

stantial lessening of competition must include a certified copy of:

- (i) The application to the Federal Trade Commission for a certification under section 508(b)(4) of the Motor Vehicle Information and Cost Savings Act, Pub. L. 94-163, 89 Stat. 911 (15 U.S.C. 2008(b)(4)), and materials supporting the application.
- (ii) The administrative record of any Federal Trade Commission proceeding held in regard to the application, and
- (iii) The certification by the Federal Trade Commission.
- (c) It is the policy of the National Highway Traffic Safety Administration that unconditional settlements of violations of average fuel economy standards are not in the public interest, and absent special and extraordinary circumstances, will not be allowed. All petitions for settlement shall contain a section proposing conditions for settlement. Conditions for settlement can be specific acts designed to lead to the reduction of automotive fuel consumption, which the petitioner is not otherwise required to perform pursuant to any statute, regulation, or administrative or judicial order, such as sponsoring public education programs, advertising, accelerating commercial application of technology, accelerating technology development programs, or making public the results of privately performed studies, surveys, or research activities.

§ 511.65 Public comment.

Notice and opportunity for comment are provided to the public in regard to settlements under this part. Subject to § 511.66, notice of receipt of a petition for settlement is published in the FEDERAL REGISTER, and a copy of such petitions and any supporting information is placed in a public docket. Any settlement agreed to by the Administrator shall be placed in the public docket for 30 days so that interested persons may comment thereon. No settlement is binding until the completion of that thirty day period.

§ 511.66 Confidential business information.

The Administrator shall have authority to segregate from the public docket